

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

No. 2:12-md-02323 (AB)

MDL No. 2323

THIS DOCUMENT RELATES TO:

SHORT FORM COMPLAINT

Second Amended Master Administrative Long-
Form Complaint against Riddell Defendants and
Gay, et al. v. National Football League, et al.,
No. 2:12-cv-04573-AB

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

JURY TRIAL DEMANDED

SHORT FORM COMPLAINT AGAINST RIDDELL DEFENDANTS

1. Plaintiff Warren Capone and Plaintiff's Spouse Rose Capone bring this civil action as a related action in the matter entitled IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION, MDL No. 2323.

2. Plaintiffs are filing this Short Form Complaint against the Riddell Defendants as required by this Court's Case Management Order ECF No. 8472, filed October 24, 2017.

3. Plaintiff and Plaintiff's Spouse continue to maintain claims against Riddell Defendants after a Class Action Settlement was entered into between the NFL Defendants and certain Plaintiffs.

4. Plaintiff and Plaintiff's Spouse incorporate by reference the allegations (as designated below) of the Second Amended Master Administrative Long-Form Complaint Against Riddell Defendants, as is fully set forth at length in this Short Form Complaint.

5. ~~[Fill in if applicable] Plaintiff is filing this case in a representative capacity as the~~
_____ of _____, ~~having been duly appointed as the~~ _____ by the Court of

~~_____. (Cross out sentence below if not applicable.) Copies of the Letters of Administration/Letters Testamentary for a wrongful death claim are annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.~~

6. Plaintiff Warren Capone is a resident and citizen of Louisiana, and claims damages as set forth below.

7. Plaintiff's Spouse Rose Capone is a resident and citizen of Louisiana, and claims damages as a result of loss of consortium proximately caused by the harm suffered by her Plaintiff husband.

8. Upon information and belief, the Plaintiff sustained repetitive, traumatic sub-concussive and/or concussive head impacts during NFL games and/or practices. Upon information and belief, Plaintiff suffers from symptoms of brain injury caused by the repetitive, traumatic sub-concussive and/or concussive head impacts the Plaintiff sustained during NFL games and/or practices. Upon information and belief, the Plaintiff's symptoms arise from injuries that are latent and have developed and continue to develop over time.

9. The original complaint by Plaintiffs in this matter was filed in the United States District Court for the Eastern District of Louisiana. If the case is remanded, it should be remanded to the United States District Court for the Eastern District of Louisiana.

10. Plaintiff claims damages as a result of [check all that apply]:

- ☒ Injury to Herself/Himself
- ☐ Injury to the Person Represented
- ☐ Wrongful Death
- ☐ Survivorship Action

- ☒ Economic Loss
- ☒ Loss of Services
- ☒ Loss of Consortium

11. As a result of the injuries to Plaintiff, Plaintiff's Spouse suffers from a loss of consortium, including the following injuries:

- ☒ Loss of martial services;
- ☒ Loss of companionship, affection or society;
- ☒ Loss of support; and
- ☐ Monetary losses in the form of unreimbursed costs she has had to expend for the health care and personal care of her husband.

12. Plaintiff and Plaintiff's Spouse reserve the right to object to federal jurisdiction.

13. Plaintiff and Plaintiff's Spouse bring this case against the following Defendants in this action [check all that apply]:

- ☒ Riddell, Inc.
- ☒ All American Sports Corp.
- ☒ Riddell Sports Group, Inc.
- ☒ BRG Sports, Inc.
- ☒ BRG Sports Holdings Corp.
- ☒ Easton-Bell Sports, LLC
- ☒ EB Sports Corp.
- ☒ BRG Sports, LLC

14. The Plaintiff wore one or more helmets designed and/or manufactured by the Riddell Defendants during one or more years Plaintiff played in the National Football League ("NFL") and/or the American Football League ("AFL").

15. Plaintiff played in ☒ the NFL and/or in ☐ the AFL during the following period of time 1975 - 1976 for the following teams: Dallas Cowboys and New Orleans Saints.

16. Plaintiff retired from playing professional football after the 1976 season.

CAUSES OF ACTION

17. Plaintiffs herein adopt by reference the following Counts of the Second Amended Master Administrative Long-Form Complaint Against Riddell Defendants, along with the factual allegations incorporated by reference in those Counts [check all that apply]:

- ☒ Count I (Negligence)
- ☒ Count II (Negligent Marketing)
- ☒ Count III (Negligent Misrepresentation)
- ☒ Count IV (Fraud)
- ☒ Count V (Strict Liability/Design Defect)
- ☒ Count VI (Failure to Warn)
- ☒ Count VII (Breach of Implied Warranty)
- ☒ Count VIII (Civil Conspiracy)
- ☒ Count IX (Fraudulent Concealment)
- ☐ Count X (Wrongful Death)
- ☐ Count XI (Survival Action)
- ☒ Count XII (Loss of Consortium)
- ☒ Count XIII (Punitive Damages under All Claims)
- ☒ Count XIV (Declaratory Relief: Punitive Damages)

18. Plaintiff assert the following additional causes of action [write in or attach]:

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Plaintiff's Spouse pray for judgment as follows:

- A. An award of compensatory damages, the amount of which will be determined at trial;
- B. An award of economic damages in the form of medical expenses, out of pocket expenses, lost earnings and other economic damages in an amount to be determined at trial;
- C. For loss of consortium as applicable;
- D. For punitive and exemplary damages as applicable;
- E. For all applicable statutory damages of the state whose laws will govern this action;
- F. For declaratory relief as applicable;
- G. For an award of attorneys' fees and costs;
- H. An award of prejudgment interest and costs of suit; and
- I. An award of such other and further relief as the Court deems just and proper.

JURY DEMANDED

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: November 28, 2017

Respectfully submitted,

s/ David B. Franco
David B. Franco (TX# 24072097)
FRANCOLAW, PLLC
500 W. 2nd Street

Floor 19, Suite 138
Austin, TX 78701
Telephone: (512) 714-2223
Facsimile: (504) 229-6730
Email: dfranco@dfrancolaw.com

Norman F. Hodgins, III
HODGINS LAW GROUP, LLC
4700 Highway 22, Suite 596
Mandeville, LA 70471
Telephone: (504) 571-9211
Facsimile: (504) 571-9112
Email: norman@hodginslawgroup.com

Counsel for Plaintiffs